



LEGAL BUREAU BULLETIN

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- I. SUBJECT:** SEARCHES OF CELLULAR PHONES
- II. QUESTION:** WHEN MAY OFFICERS SEARCH AN ARRESTEE'S CELLULAR PHONE?
- III. ANSWER:** OFFICERS MAY ONLY SEARCH AN ARRESTEE'S CELLULAR PHONE PURSUANT TO (1) A SEARCH WARRANT, OR (2) AN EXCEPTION TO THE WARRANT REQUIREMENT. OFFICERS MAY ALSO PERFORM A CURSORY INSPECTION OF A CELL PHONE BELIEVED TO BE STOLEN TO DETERMINE WHETHER THE PERSON IN POSSESSION OF THE PHONE IS ITS TRUE OWNER.

IV. DISCUSSION

A. Introduction

New York courts have consistently held that individuals have a reasonable expectation of privacy in their cellular phones, particularly because the modern cell phone is capable of storing significant amounts of private, personal information. Therefore, cell phones and their contents receive Fourth Amendment protection.

Because individuals have a protectable privacy interest in their cellular phones, officers may only search a phone (1) pursuant to a search warrant, or (2) pursuant to an exception to the warrant requirement. Officers may also perform a cursory inspection of a phone believed to be stolen to determine whether the person in possession of the phone is its true owner. The purpose of this Bulletin is to instruct Members of the Service on the law governing searches of cellular phones seized in connection with an arrest.

B. Definitions

In the context of searches of cellular phones, the following terms are defined accordingly:

- **Search:** An officer searches a cell phone where he or she accesses its contents.
- **Contents:** A phone's contents include stored photographs, text messages, e-mails, incoming and outgoing call lists, and names and numbers saved in the phone's contact list. Thus, a search of a phone's contents includes scrolling through photographs, reading text messages and e-mails, and calling numbers saved in the phone's contact list.

C. Searching a Cellular Phone Pursuant to a Search Warrant

Unless one of the exceptions to the warrant requirement applies, officers must obtain a search warrant to access and search the contents of an arrestee's cellular phone.

In order to obtain a search warrant to access a phone's contents, officers must have probable cause to believe that the phone contains evidence of a crime. Officers may have probable cause that the phone contains evidence of a crime where, for example, they believe that the phone contains text messages or e-mails detailing

a narcotics transaction, photographs of the arrestee displaying an illegal firearm, or child pornography. Officers may also apply for a search warrant where they have probable cause to believe that the cellular phone contains information that will aid in the identification of a suspect.

Pending the application for the search warrant, officers may seize a person's cell phone in connection with an arrest and voucher the phone pending the approval of a search warrant application in the following situations¹:

- Where a person is taken into custody and charged with a crime, or
- Where a person is released on a Desk Appearance Ticket ("DAT") for a criminal offense.

After vouchering a cell phone pending approval of a search warrant application, officers should expeditiously apply for a search warrant. If the search warrant application is denied, officers should make the cell phone available to the person from whom it was recovered as soon as practicable, unless there is some other independent basis for retaining the cell phone.

Officers may not voucher a cell phone where the individual is stopped and issued a criminal court summons.

Cell phone contents discovered pursuant to a search warrant, such as photographs or electronic communications, may support additional criminal charges.

D. Searching a Cellular Phone Pursuant to an Exception to the Warrant Requirement

In the absence of a search warrant, officers may search the contents of a cellular phone only where an exception to the warrant requirement applies. Exceptions to the warrant requirement in the context of cell phone searches are discussed below. Where officers access the contents of a cellular phone without obtaining a warrant pursuant to an exception, they must be able to clearly articulate how the particular exception applies.

1. Exigent Circumstances

Officers may conduct a warrantless search of the contents of a cellular phone where they are confronted with exigent circumstances. Exigent circumstances exist where there is a compelling need to act quickly such that it would be impracticable to obtain a warrant. Officers face exigent circumstances in the context of cell phone searches where, for example, the phone is believed to contain evidence necessary to locate a kidnapped victim or to investigate an ongoing terrorist plot or some other life-threatening incident.

2. Consent

In general, officers may conduct a warrantless search of personal property where they have obtained knowing, voluntary, and intelligent consent of a party who possesses the requisite degree of authority and control over the property in question. Accordingly, officers may only search an individual's cell phone if the owner gives officers knowing, voluntary, and intelligent consent to do so. Note that a consent search may not exceed the scope of the consent given. And so, for example, if an individual seeking to refute officers' suspicion that he has engaged in unlawful surveillance says to the officers, "You can look through my pictures," the officers may not also search through his contact list and list of outgoing calls. Furthermore, a person may revoke consent at any time.

E. Conducting a Cursory Inspection of a Stolen Cellular Phone to Determine its True Owner

An individual who has stolen a cellular phone does not have a recognizable expectation of privacy in the stolen item. Accordingly, officers may perform a cursory inspection of a cellular phone where they have a

¹ For details on the procedure for vouchering a cell phone seized in connection with an arrest, refer to Patrol Guide Section 218-50.

reasonable belief that the cellular phone is stolen and that the individual from whom the phone was recovered is not its true owner. In these circumstances, an officer must take only those investigative steps that are necessary to determine whether the individual in possession of the phone is its true owner.

V. CONCLUSION

Officers may only search the contents of a cellular phone where (1) they have obtained a search warrant, or (2) an exception to the warrant requirement applies. Officers may also perform a cursory inspection of a phone believed to be stolen to determine its true owner.

Where it is unclear whether a search warrant is necessary, officers are urged to contact the Legal Bureau at (646) 610-5400 to resolve any uncertainties.

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